

Selected Documents from Claim File
Claim No. LRF-2001-0727-04 to -19

BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

IN THE MATTER OF THE LIEN RECOVERY	:	ORDER
FUND CLAIM OF MASTER'S CARPET	:	
SHOWROOM ("CLAIMANT") REGARDING	:	
THE CONSTRUCTION BY BAUCORP CO.	:	
("NONPAYING PARTY") ON THE	:	
RESIDENCES OF BRIAN & KASEY	:	
CERVINSKI; MARK & ALLISON	:	
CHRISTENSEN; ROGER & TERRY	:	
WHITE; KENT & LINDA WALLENSTINE;	:	
PERRY & HEATHER WARD; JIMMY	:	
TOTARO; JON & MALINDA FERRANTE;	:	Claims No. LRF-2001-0727-04
ERIC TIDWELL; WILLIAM & JANET	:	through LRF-2001-
SEARCY; BART & CLAUDIA PATCHIN;	:	0727-19, collective
JARED & CANDICE MONSON; TRY &	:	
LARA MARTINEZ; PAUL MANNIX;	:	
MARTIN & HEIDI JOHNSON; MICHAEL &	:	
CAMARIE HOFFMAN AND JEREMY &	:	
JULIE HEAPS (COLLECTIVELY	:	
"HOMEOWNERS")	:	

~~Pursuant to the requirements for a disbursement from the Lien Recovery Fund set forth in~~
UTAH CODE ANN. § 38-11-203(3) (2001) and being apprized of all relevant facts, the Director of the Division of Occupational and Professional Licensing finds that the claimant has not complied with the requirements of UTAH CODE ANN. § 38-11-301(3)(b) (2001), which reads:

A person who does not register under Subsection (1), (2), or (3)(a) shall be prohibited from recovering under the fund as a qualified beneficiary for work performed as qualified services while not registered with the fund.

Division records show Claimant registered under subsection 38-11-301(2) on January 21, 1999.

Consequently, Claimant is barred from collecting from the fund for any qualified services

performed before that date. Using the dates reported by Claimant on the application for payment,

Table No. 1 below sets forth the last date Claimant provided qualified services on each of the incident residences.

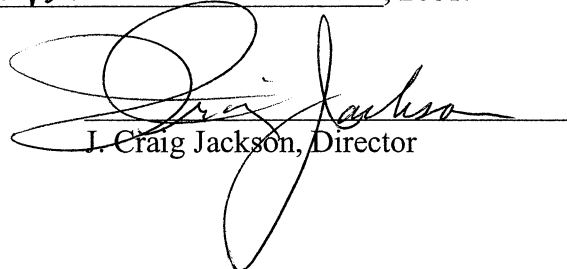
Table No. 1

Claim Number	Homeowner	Last Date of Qualified Services
LRF-2001-0727-04	Brian and Kasey Cervinski	October 24, 1997
LRF-2001-0727-05	Mark and Allison Christensen	October 27, 1997
LRF-2001-0727-06	Roger and Terry White	November 11, 1997
LRF-2001-0727-07	Kent and Linda Wallenstine	October 20, 1997
LRF-2001-0727-08	Parry and Heather Ward	August 26, 1997
LRF-2001-0727-09	Jimmy Totaro	October 25, 1997
LRF-2001-0727-10	Jon and Melinda Ferrante	September 12, 1997
LRF-2001-0727-11	Eric Tidwell	November 19, 1997
LRF-2001-0727-12	William and Janet Searcy	October 24, 1997
LRF-2001-0727-13	Bart and Claudia Patchin	October 10, 1997
LRF-2001-0727-14	Jared and Candice Monson	November 19, 1997
LRF-2001-0727-15	Try and Lara Martinez	September 20, 1997
LRF-2001-0727-16	Paul Mannix	September 12, 1997
LRF-2001-0727-17	Martin and Heidi Johnson	August 20, 1997
LRF-2001-0727-18	Michael and Camarie Hoffman	August 28, 1997
LRF-2001-0727-19	Jeremy and Julie Heaps	October 9, 1997

As can clearly be seen, Claimant had completed providing qualified services on all of the incident properties long prior to registering with the fund. Therefore, Claimant is barred from collecting from the fund for any of the above-cited claims.

WHEREFORE, the Director of the Division of Occupational and Professional Licensing orders that the above-encaptioned claims be denied.

DATED this 15th day of October, 2001.


J. Craig Jackson, Director

CHALLENGE AFTER DENIAL OF CLAIM:

Under the terms of UTAH ADMINISTRATIVE CODE, § R156-46b-202(j) (1996), this claim has been classified by the Division as an informal proceeding. Claimant may challenge the denial of the claim by filing a request for agency review. **(Procedures regarding requests for agency review are attached with Claimant's copy of this Order).**

PHILLIPS LAW OFFICE L.L.C.
"SINCE 1959"

2510 Washington Blvd., Suite 200
Ogden, Utah 84401
Telephone: (801) 621-6546
Facsimile: (801) 393-3451

RANDALL G. PHILLIPS
Attorney at Law

December 7, 2001

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DIVISION OF OCCUPATIONAL
& PROFESSIONAL LICENSING

Ms. Kathie Schwab
Program Secretary
DOPL-LRF
SM BOX 146741
Salt Lake City, Utah 84114-6741

RE: Masters Carpet Showroom v. Baucorp Company
Lien Recovery Fund No.: LRF-2001-0727-06 through LRF-2001-0727-06

Dear Kathie,

I've recently met with my client who is requesting a refund of the \$1,125.00 excluding the \$75.00 original filing fee. Said request is based upon the fact that if your investigator reviewed the first claim that was properly filed with a proper filing fee and advised me and my client that the claim was filed untimely under state law, my client would not have filed and payed the filing fee for any subsequent claims.

Both my client and I acted in good faith reasonably believing that since the original claim was excepted by the agency, all subsequent claims would also be accepted. Therefore, we respectfully request that as a matter of equity, fairness and public policy you refund the \$1,125.00 amount to my client.

If you have any questions or concerns, please call my office at (801) 621-6546. Your assistance and cooperation in this matter is greatly appreciated.

Sincerely,



Randall G. Phillips
Attorney at Law



State of Utah

DEPARTMENT OF COMMERCE

DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING

Michael O. Leavitt
Governor

Ted Boyer
Executive Director

J. Craig Jackson
Division Director

Heber M. Wells Building
160 East 300 South
P.O. Box 146741
Salt Lake City, Utah 84114-6741
(801) 530-6628 Fax: (801) 530-6511
Investigations Fax: (801) 530-6301
<http://www.commerce.state.ut.us/web/dopl/dopl1.htm>

December 10, 2001

**RANDALL PHILLIPS
PHILLIPS LAW OFFICE LLC
2510 WASHINGTON BLVD STE 200
OGDEN UT 84401-3113**

**Subject: Request for Refund of Claim Processing Fees
Lien Recovery Fund Claims No. LRF-2001-0727-04 to LRF-2001-0727-19
Claimant: Master's Carpet Showroom
Nonpaying Party: BauCorp Co.**

Dear Counselor:

I am writing in response to your request for refund of the filing fees for the above-referenced Lien Recovery Fund claims. The Division has reviewed the request. This letter sets forth that review and, ultimately, the Division's decision.

First, a misunderstanding must be clarified. Apparently you and your client were under the impression the first claim filed was accepted by the Division and approved for payment. That is not the case. As required by Utah Code Ann. § 63-38-3.3(1)(a)* no claims are reviewed until after the filing fee is received by the Division. The only review that can occur is the Program Secretary's confirmation that all required fees have been received. Because the fees had not been received, a Notice of Incomplete Claim was mailed. This Notice is the Division's means of notifying the applicant that the processing fee has not been received and that the application cannot be reviewed until the fee is received. In this case, at the time that Notice was sent the Division had made no review of the validity of any of the claims and could not have represented that any or all of the claims would be paid, denied, or otherwise disposed of.

Second, it appears much of the confusion arises from the sheer magnitude of the filing fee. Your client initially filed only a single claim for all 16 properties and paid a single filing fee. First-time filers often make the assumption that a single claim can be filed for multiple properties. However, that is not the case. Utah Administrative Code § R156-38-204a(11) requires a "separate claim must be filed for each residence and a separate filing fee must be paid for each claim."

* "State and county officers required by law to charge fees may not perform any official service unless the fees prescribed for that service are paid in advance."

Third, recognizing that your client would face a substantial cash outflow to file the claims, our Program Secretary made an extraordinary effort to ensure your client was aware of the high probability the claims would be denied. Your client initially filed Notices of Commencement of Action with the Division in late 1997. At that time the Program Secretary contacted your client because the Division had no record of Masters Carpet Showroom being a Fund registrant. Your client agreed that was the case and requested information on how to register. The Program Secretary sent your client an array of materials including a registration application and a letter clearly explaining that your client would be ineligible for payment on any claim for work performed prior to registering with the Fund. Your client finally submitted the application for registration on January 21, 1999—over a year after being informed that any work performed without registration could not be collected from the Fund.

In early 2001 your client contacted the Program Secretary for copies of the claim application. The Secretary again explained that any work performed before January 21, 1999 would not be eligible for payment. The Division believes these two notices—one written, one oral—should have been sufficient for your client to ascertain that the claims would most likely not be payable by the Fund and that filing the applications would be superfluous.

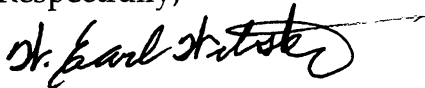
Finally, the Division has a long-standing policy of not refunding application-processing fees for any reason. The reasons for this policy are myriad. However, two of the most common are funding issues and abuse avoidance.

The Division receives no tax dollars. All funding comes from collection of fees. Those fees are used to pay the cost of reviewing each and every application the Division receives. Each of those applications is processed exactly the same way as any other like-kind application. The only variance is in the final outcome. As such, the Division expends just as much—if not more—resource to deny an application as to approve one. The fee paid by the denied applicant covers the cost incurred by the Division to reach the point of closing the application. Refunding the fee would force approved applicants to subsidize the cost of processing the applications of all other applicants.

Additionally, many times an applicant is unsure whether s/he will be approved. As a means of “testing the waters” some applicants will file application after application until one is finally approved. Such behavior is abusive to the regulatory system and circumvents the Division’s responsibilities. The application fee is the Division’s most effective tool for preventing such abuse. Refunding the fee would eliminate the Division’s ability to stop abusive applications.

We recognize that your client was only trying to protect its financial well being. We also recognize that this decision could well have significant detrimental financial impacts for your client. However, the decision to issue a refund of an application-processing fee must be viewed in light of its over-all effect on the Division. In general, refunding such a fee would be net disadvantageous to both the Division and the general public. Further, in this case, the claimant was given ample opportunity to determine for itself how to avoid incurring the expense. Therefore, as unfortunate as it may seem, the Division must deny your request for refund.

Respectfully,



W. Earl Webster, CPA
Lien Recovery Fund Program Coordinator
Phone: (801) 530-7632
Fax: (801) 530-6511
Email: ewebster@utah.gov